

**UNEMPLOYMENT  
INSURANCE AGENCY**

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## **Employer Amnesty Program Misclassification of Wages**

### **Employers Can Request UIA to Review Their Classification of Workers as “independent contractors”**

The *Michigan Employment Security Act* was amended by Public Act 269 of 2011 adding a new Section 42a, which establishes an amnesty program for employers. The amnesty program offers an attractive way to resolve worker classification issues at a reduced cost and eliminates prospective tax uncertainty.

Effective immediately, and continuing through December 31, 2012, employers who have classified some or all of their workers as “independent contractors” can request the UIA to review that classification. The UIA will apply the “economic reality test” and will issue a Determination as to whether those workers are indeed “independent contractors” or instead must be classified as “employees.”

Employers are not obligated to participate in the amnesty program. Employers are eligible to participate, even if they have been notified of the scheduling of an audit, claims investigation, or liability investigation. However, once the auditor or investigator has begun reviewing data for the audit or investigation, the employer is no longer eligible to take advantage of the amnesty program.

### **UIA Will Issue a Determination as to the Proper Classification of the Workers**

Following its review, the UIA will issue a Determination as to whether the workers were properly classified as “independent contractors.” If the UIA determines that the workers were incorrectly classified as “independent contractors,” the UIA will not:

- Assess unemployment tax on those misclassified wages prior to the date of the determination
- Assess interest or penalties on the amounts determined to be wages paid to the workers previously considered “independent contractors” prior to the date of the determination

### **Misclassified Workers Can Be Paid Resulting Benefits, But Employers Will Not Be Charged**

Any workers determined to have been improperly classified as “independent contractors” will be considered to have earned wages with the employer. If the worker becomes unemployed and files a claim for unemployment benefits, those wages can be used for the claim if they fall within the “base period” of the claim. However, the account of the employer participating in the amnesty program will not be charged for those benefits. The employer would only be charged for benefits based on wages paid after the date of the Determination issued under the amnesty program.

### **UIA Will Begin Applying 20-Factor IRS Test When Amnesty Program Ends**

Once the amnesty program ends on December 31, 2012, the UIA will begin using the IRS “20-factor” test to determine a worker’s “independent contractor” classification. Beginning January 1, 2013, interest and penalties will be assessed on unemployment taxes that were underpaid as the result of the misclassification of workers as “independent contractors.”

**For further information** about how employers can apply for the UIA’s amnesty program, contact the **Office of Employer Ombudsman (OEO)**, 1-855-484-2636 (4-UIAOEO) or 313-456-2300, or by email at [OEO@michigan.gov](mailto:OEO@michigan.gov).



Michigan Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
Authority: UIA Director; Quantity: 1,000  
Cost: \$14 (1.4¢/copy). Paid for with federal funds.